



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 13, 2010

Ms. Jo Spurger  
Administrative Assistant  
Somervell County Sheriff's Department  
750 East Gibbs Boulevard  
Glen Rose, Texas 76043

OR2010-10337

Dear Ms. Spurger:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 386484.

The Somervell County Sheriff's Department (the "sheriff") received a request for all records involving a named individual or a specified address and information pertaining to a specified incident. You state you have released some information to the requestor. You claim some of the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note you have redacted portions of the submitted information. Pursuant to section 552.301 of the Government Code, a governmental body that seeks to withhold requested information must submit to this office a copy of the information, labeled to indicate which exceptions apply to which parts of the copy, unless the governmental body has received a previous determination for the information at issue. Gov't Code §§ 552.301(a), 301(e)(1)(D). Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office. *See id.* § 552.147. Additionally, Open Records Decision No. 684 (2009) authorizes the withholding of ten categories of information, including Texas driver's license and license plate numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney

general decision. However, you do not assert, nor does our review indicate, that you have been otherwise authorized to withhold the vehicle identification numbers and criminal history record information ("CHRI") you have redacted without seeking a ruling from this office. *See id.* § 552.301(a); Open Records Decision No. 673 (2000). In this instance, we can discern the nature of the redacted information; thus, being deprived of that information does not inhibit our ability to make a ruling. In the future, however, the sheriff should refrain from redacting any information it is not authorized to withhold in seeking an open records ruling. Failure to do so may result in the presumption that the redacted information is public. *See Gov't Code* § 552.302.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." *Id.* § 552.101. This section encompasses the doctrine of common-law privacy, which protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. A compilation of an individual's criminal history is highly embarrassing information, the publication of which would be highly objectionable to a reasonable person. *Cf. U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (when considering prong regarding individual's privacy interest, court recognized distinction between public records found in courthouse files and local police stations and compiled summary of information and noted that individual has significant privacy interest in compilation of one's criminal history). Furthermore, we find that a compilation of a private citizen's criminal history is generally not of legitimate concern to the public. However, information relating to routine traffic violations is not private and may not be withheld under section 552.101 on that basis. *Cf. Gov't Code* § 411.082(2)(B) (criminal history record information does not include driving record information).

The present request, in part, requires the sheriff to compile unspecified law enforcement records concerning the individual named in the request. We find this request for unspecified law enforcement records implicates the named individual's right to privacy. Therefore, to the extent the sheriff maintains law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy. We note you have submitted information pertaining to the incident specified in the request. Additionally, you have submitted records that do not list the named individual as a suspect, arrestee, or criminal defendant and information that relates to a routine traffic violation. Because this information is not part of a compilation of an individual's criminal history, the sheriff may not withhold it under section 552.101 on that basis. However, we will address your remaining arguments for some of this information.

You raise section 552.108(a)(1) of the Government Code for case number 10000130. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” *Id.* § 552.108(a)(1). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information at issue. *See id.* § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You assert case number 10000130 relates to a pending criminal investigation and prosecution. Based on your representation and our review, we conclude that section 552.108(a)(1) is applicable to the information at issue. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note section 552.108 does not except from disclosure “basic information about an arrested person, an arrest, or a crime.” Gov’t Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (listing types of information deemed public by *Houston Chronicle*). Therefore, with the exception of basic information, the sheriff may withhold case number 10000130 under section 552.108(a)(1) of the Government Code.

Section 552.101 of the Government Code also encompasses section 411.083 of the Government Code. CHRI generated by the National Crime Information Center or by the Texas Crime Information Center is confidential. Gov’t Code § 411.083(a); Open Records Decision No. 565 (1990). Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. ORD 565. The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 deems confidential CHRI that the Texas Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083. Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. We have marked information in the remaining documents that is confidential under chapter 411 and must be withheld under section 552.101 of the Government Code.

Section 552.130 of the Government Code provides that information relating to a motor vehicle operator’s license, driver’s license, motor vehicle title, or registration issued by a

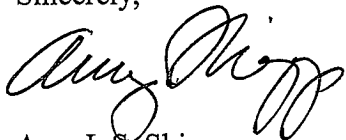
Texas agency is excepted from public release. *Id.* § 552.130(a)(1), (2). Accordingly, the sheriff must the Texas motor vehicle record information we have marked in the remaining information under section 552.130 of the Government Code.

In summary, to the extent the sheriff maintains unspecified law enforcement records depicting the named individual as a suspect, arrestee, or criminal defendant, the sheriff must withhold such information under section 552.101 in conjunction with common-law privacy. Except for basic information, the sheriff may withhold case number 10000130 under section 552.108(a)(1) of the Government Code. The sheriff must withhold the information we marked under section 552.101 of the Government Code in conjunction with chapter 411 of the Government Code and section 552.130 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/tp

Ref: ID# 386484

Enc. Submitted documents

c: Requestor  
(w/o enclosures)